

Testimony of Rep. Runestad

HJR P: To provide the Legislature authority to uphold and enforce the free speech rights of citizens guaranteed in the Bill of Rights and the Michigan Constitution.

Problem

- .Pervasive, repeated, ongoing failures of public colleges and universities to uphold and protect the speech rights of students/scholars/faculty
- .Nationwide problem exceptionally widespread in Michigan
- .Court rulings are ignored
- .Taxpayers additional victims (litigation \$)

Pervasive, repeated problems

- .2 issues since HJR introduction
 - Macomb CC sued for “free speech zones”
 - MSU uses terrorist's veto (not the fact speaker was not invited) to refuse guest speaker
- .2 other pending cases
 - Lawsuit against Kellogg CC (students arrested for distributing Bill of Rights)
 - DOJ investigation into NMU incident

Pervasive, repeated problems

- .Umich Ann Arbor
 - “Bias police”
 - President offers to be accessory to First Amendment crimes
- .GVSU settled lawsuit
- .WMU settled lawsuit
- .Title IX issues (definition of “harassment”)

Case law is abundantly clear

- .Students have right to free speech on campus
- .Cannot limit speech to “zones”
- .Univ. of Cincinnati Chapter of Young Ams. for Liberty v. Williams, 2012 U.S. Dist. LEXIS 80967, at *18 (S.D. Ohio June 12, 2012): “Open, outdoor areas of public campus are designated public forum as to students.”

Case law is abundantly clear

- .Roberts v. Haragan, 346 F. Supp. 2d 853, 862-63 (N.D. Tex. 2004) “First Amendment protections and the requisite forum analysis apply to all government-owned property; and nowhere is it more vital, nor should it be pursued with more vigilance, than on a public university campus where government ownership is all-pervasive.”
- .McGlone v. Bell, 681 F.3d 718, 733 (6th Cir. 2012) “Because the perimeter sidewalks at [Tennessee Technological University] blend into the urban grid and are physically indistinguishable from public sidewalks, they constitute traditional public fora.”

Case law is abundantly clear

.Hays Cty. Guardian v. Supple, 969 F.2d 111, 116 (5th Cir. 1992) “[T]he undisputed facts show that the outdoor grounds of the [Southwest Texas State University] campus such as the sidewalks and plazas are designated public fora for the speech of university students.”

.Widmar v. Vincent, 454 U.S. 263, 267 n.5 (1981) “With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.”

What is university “autonomy”?

.Boards of universities have autonomy over affairs of university (personnel, curriculum, programs, housing, research, tuition, admissions, business)

.Legislature has limited ability to ensure campuses follow the law

Case history

.Legislature *cannot*: Condition funding on tuition, program details; require transparency in hiring President; limit usage of funds within certain department

.Legislature *can*: Require following of prescribed business/accounting practices; require reports to governor; require equitable distribution of funds across departments; make non-teaching employees subject to workman's comp law; require loyalty oaths of teachers.

Basically, the line is:

.Legislature *can* require basic actions to uphold and enforce the rights/legal protection of citizens and broad interest of the State

.Legislature *cannot* regulate operational details of campus management

Some remedies are certainly constitutional

- .Codifying federal court rulings
 - No limiting free speech to “zones”
 - Requiring free speech policy consistent with law
 - Defining “harassment”
- .Requiring faculty and staff understand and make known to students their speech rights
- .Granting standing for lawsuit

Some remedies, TBD

- .Minimum sanctions for students infringing upon the rights of others (Title IX and otherwise)
- .Compelling campus police (or prohibiting administration from preventing campus police) interdict in student-on-student censorship/terrorism

The Legislature Needs This Authority

- .Schools have shown they will not follow the guidance of the courts
- .Lawsuits brought against schools that ignore the Constitution are wasting taxpayer money in litigation
- .Taxpayers should not pay for this to be re-litigated over and over

Students Deserve This Peace of Mind

- .Climate of censorship on campus harms students intellectually and psychologically
- .Schools are turning a blind eye to bullying, harassment, and political terrorism
- .University leaders are decidedly uninterested in preventing student-on-student violence
- .The Legislature is the only body with constitutional authority to create the policy framework to uphold our State Constitution!

A Strategy to Solve the Problem

- .Use every remedy that is undeniably constitutional immediately (Reilly legislation: schools cannot limit speech to “zones”; must have free speech policy)
- .Pass legislation that does everything needed to defend and uphold citizens' rights. Tell challengers “See you in court.”
- .Pass HJR P as a further backstop: Legislature can enforce free speech by law

“Will the voters pass an amendment?”

- .Probably yes. Free speech is popular.
- .Egregious problems would be thrust into public awareness
- .Parents should be concerned for their children; censorship has real consequences
- .Even if they didn't, conversation on the bigger issue would likely mitigate it